

Formal Action #4129

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE,

Plaintiff,

v.

SLIMAMERICA, INCORPORATED,

a foreign corporation,

Defendant.

COMPLAINT

This civil action is brought in the name of the State of Tennessee, by and through Charles W. Burson, the Attorney General and Reporter ("Attorney General"), pursuant to Tenn. Code Ann. §§ 47-18-108(a)(1) and 47-18-114, at the request of the Division of Consumer Affairs of the Tennessee Department of Commerce and Insurance (the "Division"), having reason to believe that the Defendant named herein has violated the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101, et seq., and that this action is in the public interest.

I. JURISDICTION AND VENUE

I. The jurisdiction of this Court is invoked pursuant to the provisions of Tenn. Code Ann. § 47-18-108. Venue is proper in Davidson County, pursuant to the provisions of Tenn. Code Ann. § 47-18-108(a)(3), because it is a county in which Defendant conducts or has conducted business. Defendant has been provided with the ten (10) days notice of contemplated legal action as set forth in Tenn. Code Ann. § 47-18-108(a)(2). (Affidavit and Verification of Mark Williams, Director, Division of Consumer Affairs, Department of Commerce and insurance is attached as Exhibit A.)

II. PARTIES

2. Pursuant to Tenn. Code Ann. §§ 47-18-108(a)(1) and 47-18-114, this action is commenced in the name of the State of Tennessee, by the Attorney General, at the request of the Division. (See Exhibit A, Affidavit and Verification of Mark Williams, Director of the Division of Consumer Affairs).

3. Defendant SlimAmerica, Incorporated is a Nevada corporation. It's registered agent for service of process is The Corporation Trust Company of Nevada and its registered office is One East First Street, Reno, Nevada 89501. The principal place of business of SlimAmerica, Inc. is Dept. 237, 777 South State Road 7, Suite #15, Margate, Florida 33068.

III. FACTUAL ALLEGATIONS

4. At issue are Defendant's advertisements for a weight loss program. These advertisements are replete with deceptive, unfair, misleading and contradictory statements about the general effectiveness, history of success, and medical substantiation for the program's components.

5. The Defendant placed advertisements in the Tennessean and Knoxville News-Sentinel, and in national magazines such as Woman's Day, Family Circle and Working Mother promoting a "Super-Formula program" which ostensibly results in dramatic weight loss. The Defendant may have also placed advertisements in other local, regional and national publications as well as on the radio or television. Attached as Collective Exhibit B is a true and exact copy of some of the advertisements placed by the Defendant. Defendant also promotes its "weight loss" method on the world wide web at SlimAmerica.com. Attached as Exhibit C is a true and exact copy of Defendant's world wide web home page.

6. Defendant's advertisements contain numerous claims of incredibly rapid and easy weight loss success. For example:

"BLAST UP TO 49 POUNDS OFF YOU IN ONLY 29 DAYS! No Discipline! No "Soul Searching" Will Power! No Starvation! No Back-Breaking Exercise! Eat Up to 6 Times A Day!"

"[N]ew 'Super-Formula'TM can annihilate up to 29 pounds of flab in only 14 days up to 12 pounds in only one short week... and yes.. it can force up to 7 ugly pounds to instantly disappear in as little as 48 hours"

"Obliterates Up to 5 Inches From Your Waistline...Zaps 3 Inches From Your Thighs Before You Know It!"

"Super-Formula Program will quickly evaporate virtually every ounce of visible fat from your waist, hips, thighs, and rear-end...so lightening bolt fast...you'll want to dash to the mirror every 15 minutes to watch those ugly pounds magically disappear right before your eyes!"

..."without discipline ...without 'Soul searching' will power...without one moment of back breaking exercise...without night-time bingein(sic)...WHILE EATING UP TO 6 TIMES A DAY!"

"No painful exercise! No Starvation! No Skimping on foods you love to eat!"

7. In short, the Defendant offers what every dieter wants to hear: a promise to lose virtually any amount of weight quickly and without effort. In order to provide what no one else has ever been able to, the Defendant offers "a medical breakthrough" consisting of four separate components, some chemical and some natural, which are taken in pill form and purportedly work together to result in dramatic weight loss. There is no competent medical or scientific evidence whatsoever to support the claim that any of these components, taken singularly or together, result in the weight loss promised.
8. The first component, "Absorbit-ALL™", purportedly "absorbs up to 15 times it's (sic) weight in dietary fat and actually blocks fat in the food you eat from being turned into ugly, unsightly pounds on your body." There is no competent scientific or medical proof in existence that establishes that this chemical can do the things that the Defendant promises it can do.
9. The second component of Defendant's program is "Absorbit-ALL PLUS™" (also identified as *Amorphophallus Konjac*). This root allegedly gives the dieter a feeling of satiety while it "prevents fat, harmful cholesterol and triglycerides from entering your system." Again, despite invoking the praise of unidentified "major universities and medical centers worldwide", there is no competent medical or scientific substantiation for the claims made about the efficacy of this product in weight loss.
10. The third component of Defendant's plan is called "SLIM-Again™ HCA" and is identified as "Hydroxycitrate". The Defendant deceptively claims that this "wonder drug" increases the body's ability to convert food into glycogen thereby triggering appetite suppression. The Defendant falsely asserts in the advertisements that by including this chemical into the Super-Formula plan, you won't get hungry. But, the Defendant goes on to say, if the HCA doesn't prevent hunger altogether, the first two elements will kick in and any fat consumed will magically disappear. Of course, there is no competent scientific or medical proof that any of this will actually occur in the human body.
11. The final element of the Super-Formula program is *Chromium Picolinate*, a chemical which has received a great deal of attention in the past year. Chromium Picolinate has been promoted, as it is here, as a "muscle toner" for some time. Studies have, in fact, been conducted relating to the effectiveness of *Chromium Picolinate* in the muscle toning and/or building process. These studies are inconclusive, however, as to the effectiveness of this chemical in people who are not exercising and, as is obvious from the plain language of Defendant's advertisement, exercise is not a component of Defendant's weight loss plan. More importantly, there has been no research of the use of *Chromium Picolinate* in conjunction with the other elements of Defendant's program.
12. As previously stated, the false claims outlined above are not based on any competent medical or scientific evidence. Yet the Defendant, in an effort to lend credibility to these claims, includes the testimony of Dr. Howard Retzer in its advertisements, which states in part, " In all my many years as a physician I have never come across such a remarkable combination of ingredients that are so powerful and effective for losing weight." The advertisement goes on to identify him as the "Past President of the American College of Endocrinology and Nutrition and of the Research Institute of Metabolism and Nutrition". Upon information and belief, however, the State alleges that Howard Retzer is not a medical doctor and has never been "Past President of the American College of Endocrinology and Nutrition". Further, experts in the field of weight loss do not recognize the Research Institute of Metabolism and Nutrition as a leading research entity in the field of weight loss.

13. Despite the lack of substantiation for the claims of success made, Defendant makes a "Guaranteed Risk Free Offer". Defendant states, "Either this amazing new 'Super-Formula Program' lives up to it's promise -or you won't risk one cent", and "...it will be a decision backed by a 100% iron clad money back guarantee!". The effect of this statement, especially taken in conjunction with the tone of Defendant's entire advertisement, leads consumers to believe that the Defendant's weight loss method is effective, easy and proven. This is simply not true.

14. The deceptiveness of Defendant's claims is primarily established through the plain language of the advertisement. In addition to the pills a consumer receives, he or she also receives a booklet entitled, "Amazing Super-Formula™ Diet Tips, Weight-Loss Secrets and Clinical Documentation." This booklet, a copy of which is attached as Exhibit D, and is to be used in conjunction with Defendant's miracle weight loss program, provides dietary suggestions for cutting calories and fat from one's diet. This booklet clearly contains contradictions of Defendant's own claims of being able to eat anything and everything and still lose weight with Defendant's pills. Additionally, although there are clinical studies cited in the booklet, none of these studies relate to Defendant's program or any program substantially similar to it.

15. There is a separate problem with Defendant's "Amazing Super-Formula™ Diet Tips, Weight-Loss Secrets and Clinical Documentation" booklet in the manner in which it is disseminated. The only method of obtaining the "free" booklet is to order Defendant's pills at a minimum cost of \$49.95 plus \$5.95 shipping and handling. There is no definition of "free" which would enable the Defendant to charge \$55.90 to obtain the "free" item.

16. There are other significant contradictions embedded in the Defendant's advertisement. For example, "Dr. Retzer" states, "The incredible losses of both pounds and inches cited above and the incredible speed at which they come off, as much as 29 lbs. in just 14 days are atypical results from the test subjects who tried the fabulous ingredients that comprise the 'Super-Formula Program' and "While results vary from person to person...". If this statement is true, and the touted results are "atypical" from the "test subjects", the Defendant admits within this advertisement that there are no "clinical studies" which verify the results claimed. If the weight loss amounts claimed have not been seen in any "test subjects," the Defendant cannot make those general claims about the product.

17. Unquestionably, the most significant issue presented in this case is the consumer's health. Nowhere in Defendant's two-page advertisement does the Defendant even suggest that consumers consult a physician prior to beginning this diet program. This omission is even more outrageous because the product's package states that people who suffer from diabetes or who are pregnant should consult a physician prior to taking the pills. By presenting this information only after the product has been purchased and received, the Defendant has done too little too late to warn the consumer of potential health risks associated with beginning a diet program without medical supervision.

18. In responding to concerns of the National Advertising Review Board ("NARB"), the Defendant admitted that the numbers cited as levels of expected weight loss in the advertisement were "arbitrary numbers." The Defendant also claimed that each separate ingredient of the diet plan could support the claims made in the advertisement so that the claims about the success of the program as a whole were justified. The NARB panel, however, was not presented with any evidence that each separate ingredient could, in fact, support the claims. Additionally, as stated by that board, the "newness" of the Defendant's diet plan as advertised is the combination of the elements rather than the use of each ingredient. The Defendant also admitted that it could not verify Dr. Retzer's qualifications nor could it provide information about the entity with which he was supposed to be aligned. (A copy of the Board's decision on appeal is attached as Exhibit E hereto.)

19. Unlike the National Advertising Review Board, the State of Tennessee has not been provided with any information responding to its concerns. A Request for Consumer Protection Information was served on the Defendant in May of 1996.

The Defendant has completely ignored this Request and other attempts made to obtain any evidence which would substantiate the claims made in Defendant's advertisements. (A copy of the State's Request for Consumer Protection Information is attached as Exhibit F.)

20. As a result of Defendant's actions as described herein, consumers have suffered losses of money and/or property and additional consumers may continue to suffer losses.

IV. VIOLATIONS OF THE LAW

21. The advertisements placed by the Defendant to promote its weight loss program as alleged herein constitute "trade", "commerce" and/or a "consumer transaction" and the offering of or providing of "goods" and/or "services" as defined in Tenn. Code Ann. §47-18-103(5), (8), and (9).

22. All of the acts and practices engaged in and employed by Defendant as alleged herein are "unfair or deceptive acts or practices affecting the conduct of ... trade or commerce" in Tennessee, which are declared unlawful by Tenn. Code Ann. § 47-18-104(a).

23. Each and every unfair and deceptive act or practice engaged in by the Defendant recited above constitutes a separate violation of the Tennessee Consumer Protection Act and is punishable by a civil penalty of not more than One Thousand Dollars (\$1,000.00) per violation as provided by Tenn. Code Ann. §47-18-108(b).

24. By representing that specific amounts of weight can be lost within specified time frames without having competent medical and/or scientific evidence to support those claims, Defendant has violated Tenn. Code Ann. §47-18-108(b)(5) which prohibits representations that goods or services have "characteristics,... uses [or] benefits... that they do not have."

25. By representing that the testimonial of Dr. Howard Retzer is based on his work as the past President of the American College of Nutrition and of the Research Institute of Metabolism and Nutrition, the Defendant has violated Tenn. Code Ann. §47-18-108(b)(5) which prohibits representations that goods or services have "sponsorship or approval... that they do not have."

26. By representing that Defendant's Super Formula™ diet program offers a "100% iron-clad money back guarantee", Defendant has violated Tenn. Code Ann. §47-18-108(b)(12) which prohibits representing that a consumer transaction confers or involves, remedies or obligations that it does not have... "and Tenn. Code Ann. §47-18-108(b)(19) which prohibits "representing that a guarantee or warranty confers or involves rights or remedies that it does not have or involve..."

27. Further, the Defendant has violated Tenn. Code Ann. §47-18-108(b)(27), which prohibits "engaging in any act or practice which is deceptive to the consumer or any other person." The Defendant's conduct which violates this part includes:

(A) Publishing advertisements for the "Super Formula™ Program" which are designed to lead consumers to rely upon fraudulent, contradictory, misleading, deceptive and/or unfair statements thereby encouraging consumers to risk their health and money for this diet program;

(B) Making unsubstantiated claims regarding the effectiveness of the components of Defendant's diet plan;

- (C) Making contradictory and unsubstantiated claims in its advertisements relating to the effectiveness, safety and success of its diet program;
- (D) Using a testimonial from a doctor based on fraudulent medical background, experience and expertise;
- (E) Offering a "free" booklet which is only available to consumers who purchase a minimum of \$49.95 for products;
- (F) Offering a "guaranteed" weight loss program with no competent medical and/or scientific evidence establishing that the program has ever resulted in the advertised weight loss;
- (G) Failing to advise consumers to obtain medical clearance or supervision prior to beginning its diet program;
- (H) Failing to advise consumers in its advertisements that persons who suffer from diabetes or who are pregnant should only partake of Defendant's program under medical supervision; and
- (I) Failing to respond to the State's Request For Consumer Protection Information by providing substantiation for the claims made in Defendant's advertisements.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, THE STATE OF TENNESSEE PRAYS:

- (1) That this Complaint be filed without cost bond as provided by Tenn. Code Ann. §§ 20-13-101, 47-18-108, and 47-18-116.
- (2) That process issue and be served upon Defendant requiring it to appear and answer this Complaint.
- (3) That this Court adjudge and decree that Defendant has engaged in the aforesaid acts or practices in violation of the Tennessee Consumer Protection Act.
- (4) That this Court temporarily and permanently enjoin Defendant from engaging in the aforesaid acts or practices, which are violative of the Tennessee Consumer Protection Act.
- (5) That this Court make such orders or render such judgements as may be necessary to restore to any consumer or other person any ascertainable losses (including statutory interest) suffered by reason of the alleged violations of the Tennessee Consumer Protection Act.
- (6) That the Court adjudge and decree that the Defendant is liable to the State for the reasonable costs and expenses of the investigation and prosecution of the Defendant's actions, including attorneys' fees, as provided by Tenn. Code Ann. § 47-18-108(b).
- (7) That the Court adjudge and decree that the Defendant pay civil penalties of not more than one thousand dollars (\$1,000.00) per violation to the State as provided by Tenn. Code Ann. §47-18-108(b).

(8) That all costs in this cause be taxed against Defendant.

(9) That this Court grant Plaintiff such other and further relief as this Court deems just and proper.